

REMARKS/ARGUMENTS

I. SPECIFICATION

The specification has been amended to correct minor editorial problems and to clarify terms in the text. No new matter has been entered.

II. STATUS OF CLAIMS

Claims 1-15 remain in this application. Claims 5, 10, and 15 have been amended.

III. DRAWINGS

The Office Action have been objected to under 37 CFR 1.83(a). Applicant has amended the Specification to reflect the elements in the drawings that correspond to the features objected to, namely, dynamic hop count, Round Trip Times (RTT), and higher level server. Applicant believes that the objections have been addressed and satisfied by these amendments.

If the Examiner has any further comments or questions relating to the amendments, he is invited to call Applicant's attorney, Kirk Wong at (408) 414-1214.

Applicant respectfully requests that the Examiner withdraw the objections under 37 CFR 1.83(a).

IV. CLAIM REJECTIONS – 35 U.S.C. § 112

The Office Action rejected Claims 1, 2, 6, 7, 11, and 12 under 35 U.S.C. §112, first paragraph, as failing to comply with enablement requirement. The rejection is

respectfully traversed. Applicant has amended the Specification to specifically describe the term "dynamic hop count" as to what and/or how it is created/measured.

The Office Action rejected Claims 5, 10 and 15 under 35 U.S.C. §112, first paragraph, as failing to comply with enablement requirement. The rejection is respectfully traversed. Applicant has amended the Specification to specifically describe the term "weighted combination" as to how or what is the function of a "weighted combination".

The Office Action rejected Claims 3, 8, and 13 under 35 U.S.C. §112, first paragraph, as failing to comply with enablement requirement. The rejection is respectfully traversed. Applicant has amended the Specification to specifically describe the term "higher level server" as to what specifically and/or how a server is of "higher level".

The Office Action rejected Claims 5, 10 and 15 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The rejection is respectfully traversed. Applicant has amended Claims 5, 10, and 15 to provide proper antecedent basis.

Therefore, Applicant respectfully requests that the Examiner withdraw the rejections under 35 USC §112, first and second paragraphs.

#### V. CLAIM REJECTIONS – 35 U.S.C. § 102

The Office Action rejected Claims 1, 2, 4, 6, 7, 9 , 11, 12 and 14 under 35 U.S.C. § 102(e) as being clearly anticipated by Shah et al., U.S. Patent No. 6,292,832 (Shah). The rejection is respectfully traversed.

The Office Action states that Shah teaches:

“wherein said latency management table comprises a list of IP addresses along with corresponding Border Gateway Protocol (BGP) hop counts, dynamic hop counts, and Round Trip Times (RTT), (e.g. col. 8, lines 17-30 & col. 13, lines 13-33 & col. 15, lines 36-64);”

However, Shah makes no mention of dynamic hop counts. Therefore, Shah does not teach, disclose, or contemplate a system wherein said latency management table comprises a list of IP addresses along with corresponding Border Gateway Protocol (BGP) hop counts, dynamic hop counts, and Round Trip Times (RTT) as claimed in the invention.

Additionally, the Office Action states that Shah teaches:

“wherein the BGP hop count for said client in said latency management table is used for said latency metric upon the first request for said client, (e.g. col. 3, lines 24-67);”

However, the Office Action does not interpret the claim language as it is written. The claim language is (emphasis added) “wherein the BGP hop count for said client in said latency management table **is used for said latency metric upon the first request for said client**”. Shah does not teach such a system as claimed in the invention. Shah makes no such distinction.

The Office Action further states that Shah teaches:

“wherein the dynamic hop count and RTT data for said client in said latency management table are used for said latency metric for subsequent requests for said client (e.g. col. 1, line 46 – col. 2, line 38 & col. 8, line 48 – col. 9, line 44 & col. 15, lines 36-64).”

However, the Office Action again does not interpret the claim language as it is written. The claim language is (emphasis added) “wherein the dynamic hop count and RTT data for said client in said latency management table **are used for said latency metric for subsequent requests for said client**”. Shah does not teach such a system as claimed in the invention. Again, Shah makes no such distinction.

Anticipation under 35 U.S.C. § 102 requires a reference to teach or disclose each and every element, limitation, or step of a claim. Since Claim 1 includes at least one

element not found in Shah, the Shah patent does not anticipate Claim 1 under 35 U.S.C. § 102.

Claim 1 is allowable. Claims 6 and 11 are allowable in similar manner. Claims 2, 4 and 7, 9, and 12, 14 are dependent upon Claims 1, 6, and 11, respectively. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection under 35 USC § 102.

#### VI. CLAIM REJECTIONS – 35 U.S.C. § 103

The Office Action rejected Claims 3, 8 and 13 under 35 U.S.C. § 103(a) as being unpatentable over Shah (6,292,832) in view of what is well known in the art.

The rejection under 35 USC §103(a) is deemed moot in view of Applicant's comments regarding Claims 1, 6, and 11, above. Claims 3 and 8 and 13 are dependent upon independent Claims 1, 6, and 11, respectively. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection under 35 USC §103(a).

#### VII. CLAIM REJECTIONS – 35 U.S.C. § 103

The Office Action rejected Claims 5, 10, and 15 under 35 U.S.C. § 103(a) as being unpatentable over Shah (6,292,832) in view of McCanne (6,415,323).

The rejection under 35 USC §103(a) is deemed moot in view of Applicant's comments regarding Claims 1, 6, and 11, above. Claims 5 and 10 and 15 are dependent upon independent Claims 1, 6, and 11, respectively. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection under 35 USC §103(a).

### VIII. CONCLUSIONS & MISCELLANEOUS

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

The Applicants believe that all issues raised in the Office Action have been addressed and that allowance of the pending claims is appropriate. Entry of the amendments herein and further examination on the merits are respectfully requested.

The Examiner is invited to telephone the undersigned at (408) 414-1080 to discuss any issue that may advance prosecution.

No fee is believed to be due specifically in connection with this Reply. To the extent necessary, Applicants petition for an extension of time under 37 C.F.R. § 1.136. The Commissioner is authorized to charge any fee that may be due in connection with this Reply to our Deposit Account No. 50-1302.

Respectfully submitted,

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#### CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Non-Fee Amendment, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

on January 26, 2004 by \_\_\_\_\_  
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(Signature)